Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers	)	CC Docket No. 00-256
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation	)	CC Docket No. 98-77
	)	
Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers	)	CC Docket No. 98-166

PETITION FOR RECONSIDERATION

Pursuant to Section 1.429 of the Commission's rules, 47 C.F.R. § 1.429, CenturyTel, Inc. ("CenturyTel"),[1] through its attorneys, hereby seeks limited reconsideration of the Commission's *MAG Order*, released November 8, 2001, in the above-captioned dockets.[2]

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[1] CenturyTel, which is headquartered in Monroe, Louisiana, is a leading provider of integrated communications services to rural markets. CenturyTel and its affiliates utilize state-of-the-art technology to provide a variety of high quality communications services to consumers in twenty-one states. Very few of its exchanges, however, serve more than 10,000 access lines, and approximately half of CenturyTel's exchanges serve fewer than 1,000 lines. All of CenturyTel's telephone operating companies qualify as rural under the definition contained in the Communications Act of 1934, as amended. 47 U.S.C. § 153(37).

[2] *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, et. al.*, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, FCC 01-304, 16 FCC Rcd 19613 (2001) ("*MAG Order*"). This Order was published in the *Federal Register* on November 30, 2001, *see* 66 Fed. Reg. 59719 (Nov. 30, 2001); Petitions for Reconsideration are due, therefore, on December 31, 2001. 47 U.S.C. § 405(a); 47 C.F.R. §§ 1.429(d), 1.4(b)(1).

I. INTRODUCTION AND SUMMARY

As a result of state public utility commission ("PUC") policies requiring CenturyTel's intrastate traffic-sensitive rates to "mirror" its corresponding traffic-sensitive interstate access charges, CenturyTel will, under the MAG rules as adopted, suffer a sudden and precipitous drop in access charge revenues of approximately $5 million per year commencing on January 1, 2002 in Arkansas and Ohio. This drop represents roughly a 30 percent reduction in intrastate access charge revenues in each of those states and, as such, threatens universal service and places upward pressure on local rates in those states. Over 300,000 CenturyTel lines operate under state rules requiring mirroring of interstate traffic-sensitive rates, including over 225,000 lines in Arkansas, operated by CenturyTel of Russellville (114,893 lines), CenturyTel of Jacksonville, (89,165 lines), and CenturyTel of Siloam Springs (23,08 lines), and over 85,000 in Ohio, operated by CenturyTel of Ohio.

CenturyTel therefore seeks reconsideration to the extent necessary to preserve its current intrastate traffic-sensitive cost recovery while the affected state PUCs complete a review of the structure and level of CenturyTel's intrastate rates. Such intrastate traffic-sensitive access charges may contain implicit intrastate universal service support. Accordingly, it violates the Commission's Section 254 universal service mandate to take sudden action that reduces these charges without affording the affected states an opportunity to take action necessary to review the affected carriers' rate structures and levels and ensure that adequate state universal service mechanisms exist. 47 U.S.C. § 254(b); *Qwest Corp. v. FCC*, 258 F.3d 1191, 1203-04 (10th Cir. 2001).

To remedy this deficiency, while preserving the Commission's interstate policy choices, CenturyTel therefore requests that the Commission delay for 6 months, until July 1, 2002, the effectiveness of the rules requiring reallocation of line-side port and transport

interconnection charge ("TIC") costs in states that mirror federal traffic-sensitive access charges, specifically new sections 69.124(a), 69.130, 69.306(d)(2), and 69.415.

There may also be other viable avenues of relief. The *Qwest* Court required only that the Commission "create some inducement – a 'carrot' or a 'stick,' for example, or simply a binding cooperative agreement with the states – for the states to assist in implementing the goals of universal service," 258 F.3d at 1204. What is clear, however, is that the Commission cannot wholly disregard the fact that states that mirror federal access charges need adequate time to thoroughly review their existing policies in light of such sweeping changes at the federal level. Rather, the Commission must find a solution that permits federal policies to move forward, while affording such mirroring states some breathing room to study and, where necessary, adjust their own policies.

II. THE MAG RULES THREATEN INTRASTATE UNIVERSAL SERVICE.

A. Background

In the *MAG Order*, the Commission significantly revised the interstate access charge rate structure applicable to rate-of-return carriers. Among the most significant changes, the Commission (1) significantly increased the caps on subscriber line charges to the levels established in 2000 for price cap carriers; (2) created an interstate common line support mechanism that will supplant the carrier common line charge by July, 2003; (3) reallocated the costs of line-side local switch ports from the traffic-sensitive local switching revenue requirement to the common line revenue requirement, substantially reducing the traffic-sensitive revenue requirement and local switching rates; and (4) eliminated the TIC by reallocating TIC revenues among other access rate elements, primarily the common line rate elements. *MAG Order*, 16 FCC Rcd at 19621 (para. 15).

The cumulative effect of these changes, on January 1, 2002, will be to substantially increase the recovery of interstate-allocated costs from end users and interstate universal service support mechanisms, while substantially decreasing the recovery of interstate-allocated costs through traffic-sensitive charges assessed on interexchange carriers.

CenturyTel commends the Commission for its efforts to make the transition revenue-neutral for the affected non-price cap LECs. *MAG Order*, 16 FCC Rcd at 19620 (para. 12). The Commission, however, did not adequately account for the effect the *MAG Order* will have in states that require intrastate traffic-sensitive access charges – but not common line charges – to mirror interstate levels. In Arkansas, three CenturyTel operating companies participate in the Arkansas Intrastate Carrier Common Line Pool ("AICCLP"). The AICCLP Administrator assesses on intrastate toll carriers an intrastate carrier common line charge that is based on each carrier's proportion of retail billed minutes-of-use, as reported to the AICCLP Administrator. This charge, however, is based on participating LEC common line ("CCL") revenue requirements *as they existed in 1994*. Since that time, the common line revenue requirements of AICCLP participants – and thus the amount of revenue that the participants are permitted to recover through the AICCLP– have never been updated.

In contrast, the Arkansas Public Service Commission requires CenturyTel's intrastate traffic-sensitive rates to mirror interstate levels. Accordingly, on January 1, 2002, CenturyTel must immediately mirror in Arkansas its new, lower traffic-sensitive rate resulting from the Commission's federal traffic-sensitive and TIC reallocations. It will not, however, be able to shift cost recovery to common line, intrastate universal service, or other mechanisms without completing a full intrastate rate case because the Arkansas rate structure neither provides any opportunity to increase local rates without filing a full and lengthy rate case nor provides for

any charge analogous to the subscriber line charge ("SLC") in which increases could be mirrored.

In Ohio, a similar situation exists. CenturyTel's Ohio intrastate common line revenue requirement – and its attendant common line cost recovery – is frozen. The Public Utility Commission of Ohio, however, requires CenturyTel to mirror at the state level, reductions in its interstate traffic-sensitive rates that will result from the *MAG Order* rule changes.

Accordingly, in these states, CenturyTel has no opportunity to reflect the reallocation of TIC and line-side port costs in increased intrastate common line recovery, as it will at the interstate level. On the other hand, the dramatic reductions in the interstate TIC and local switching rates will immediately be reflected in Arkansas and Ohio intrastate traffic-sensitive rates, causing an annual reduction in CenturyTel's revenues of approximately 30 percent in those states, or roughly $3.4 million in Arkansas and $1.6 million in Ohio.

CenturyTel does not believe that the Commission anticipated such a dramatic decrease in intrastate revenues would result from its actions in the *MAG Order*. Yet, because there is no possibility for CenturyTel to alter its recovery of intrastate common line costs in these states concurrently with the decrease in traffic-sensitive rates the *MAG Order* produces, CenturyTel faces this prospect on January 1, 2002. CenturyTel is preparing to file a rate case in Arkansas early in 2002, but such a proceeding may take up to 10 months from the date of filing. Ark. Pub. Util. Code §§ 23-4-402, 23-4-407, 23-4-411.[3] While CenturyTel cannot predict the outcome of such a review of its rate levels and structure, it is clear that, under Section 254, the

[3] The six-month delay CenturyTel requests will not fully cover the potential duration of this rate case, but it will significantly reduce the impact at the state level of the federal rule changes.

Arkansas Commission (and CenturyTel) must be given a reasonable opportunity to perform such a review.

B. The *MAG Order* Violates the Commission's Universal Service Mandate.

Section 254 of the Communications Act generally requires the Commission and the state commissions to work cooperatively to preserve universal service, *see generally* 47 U.S.C. § 254(b). Specifically, the FCC and the states must convert universal service support that is implicit in rate structures to explicit, 47 U.S.C. § 254(e) (support mechanisms "should be explicit"), *see Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 616 (5th Cir. 2000) (implicit support must be replaced with explicit); *Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 425 (5th Cir. 1999) (same), and to do so in a manner that is consistent with the development of efficient competition, 47 U.S.C. § 254(e) (any eligible telecommunications carrier may receive explicit support); *see also* 47 U.S.C. §§ 251-252.

More than simply pursuing the same goals, it is clear that Section 254 requires the Commission to take an active and leading role in encouraging and facilitating the development of pro-competitive state rate structures and explicit universal service mechanisms. *See Qwest*, 258 F.3d at 1203. Specifically, in remanding the Commission's high-cost support mechanism applicable to non-rural carriers to the Commission, the Tenth Circuit held that the Commission is obligated to "develop mechanisms to induce state action" to achieve reasonable comparability of rates and services between urban and rural areas within their borders. CenturyTel believes that it would be, at a minimum, premature for the Commission to preempt states commission efforts to achieve reasonable comparability of rates and services. The Commission must, however, provide an adequate time for states to act. Unilateral federal action that eliminates implicit universal service support at the state level without providing any adequate opportunity for states

to develop replacement rate and universal service reforms frustrates state efforts to achieve the goals of Section 254 and, accordingly, in violation of the mandate of the *Qwest* Court. *Id.* at 1204.

The *MAG Order*, whether intentionally or not, disregards the Tenth Circuit's command. The Commission has recognized repeatedly that access charge and universal service reform are inextricably linked at the federal level. *MAG Order*, 16 FCC Rcd at 19637 (para. 49) (reform of common line rate structure furthers competitive and universal service goals); *Access Charge Reform*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, and Eleventh Report and Order in CC Docket No. 96-45 ("*CALLS Order*"), FCC 00-193, 15 FCC Rcd 12962, 12972 (para. 24) (2000) (universal service support implicit in access charges undermined by development of competition), *aff'd in relevant part sub nom. Texas Office of Pub. Util. Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001); *Access Charge Reform*, First Report and Order, FCC 97-158, 12 FCC Rcd 15982, 15998 (para. 35) (1997) (same), *aff'd sub nom. Southwestern Bell Tel. Co. v. FCC*, 153 F.3d 523 (8th Cir. 1998). The *MAG Order* itself intertwines access charge and universal service issues by creating an explicit interstate common line support (ICLS) mechanism to replace implicit support the Commission identified in its interstate access charge rate structure.

Access charge and universal service issues are no less intertwined at the state level. The Arkansas carrier common line and traffic-sensitive rates undeniably may contain some level of implicit universal service support. Both are averaged over large geographic areas. Further, the AICCLP recovers non-traffic-sensitive common line costs on a usage-sensitive basis. Finally, the Arkansas CCL rate is based on 1994 common line revenue requirements, while the traffic-sensitive rates are required simply to mirror those imposed at the federal level.

As a result, it is possible – even likely – that Arkansas local switching, common line, and TIC rates subsidize, or are subsidized by, other rate elements.

Accordingly, the *MAG Order* cannot be squared with the Tenth Circuit's explanation of the requirements of Section 254. The *Qwest* Court held that Section 254 requires the Commission to "undertake the responsibility to ensure that the states act" to achieve affordability and reasonable comparability of rates and services within their borders. 258 F.3d at 1204. Executing this responsibility, the Tenth Circuit envisioned that the Commission would develop some type of "carrot," "stick," or "binding cooperative agreement," for example, that would encourage and, in extreme cases, require the state PUCs to act. *Id.*

The Commission's eliminating approximately $5 million in intrastate cost recovery without providing any opportunity for the states to consider the impact of such a change will materially diminish the states' ability to achieve the affordability and reasonable comparability goals of the statute. Despite the clear impact the Commission's actions will have on state-level access charges and, potentially, implicit universal service support mechanisms, the *MAG Order* is devoid of any consideration of the effect of state statutes and rules requiring mirroring of only a portion of the federal reforms. Far from cooperation or encouragement, the *MAG Order* does not even provide adequate time for a willing and eager state PUC to take action.

C. The Commission Must Create an Opportunity for States to Act.

To comply with the requirements of Section 254, the Commission must create a reasonable opportunity for the states to review the universal service implications of the federal reforms for their intrastate rate structures. The clearest, cleanest, and most expedient way to do so would be to delay for six months the reallocation of line-side port costs and the TIC to other

interstate rate elements. This option would allow the Commission's other reforms, such as the increase in the SLC caps, to move forward on January 1, 2002, and would not interfere with the launch of the ICLS mechanism on July 1, 2002. It would also ameliorate the most significant impacts of the new rules at the state level, and provide a brief, but more adequate, period for state action.

In the alternative, CenturyTel urges the Commission to explore other ways to provide an avenue for intrastate access charges to mirror a rate based on the Part 69 rules in effect on December 30, 2001. The Commission has the authority, under the statute and the *Qwest* decision, both to create a "state inducement" to review intrastate rate structures and universal service support mechanisms, 258 F.3d at 1203, and to preserve existing implicit support flows while the state PUCs take such action, 47 U.S.C. § 254(b)(5) (state and federal policies must *preserve* and advance universal service). Such an inducement may take the form of a "carrot" or a "stick," for example, or "a binding cooperative agreement with the states," 258 F.3d at 1204.

Such a solution should be crafted *both* to preserve, inasmuch as is possible, the Commission's federal policy decisions *and* properly to accommodate the needs of states that mirror federal access charges and, therefore, now must review their existing policies in light of such sweeping changes at the federal level.

III. CONCLUSION.

For the foregoing reasons, CenturyTel urges the Commission to reconsider the rules adopted in the *MAG Order* to the extent indicated herein.

Respectfully submitted,

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